



RTO WEST - SUBGROUP A

LEGAL WORK GROUP REPORT TO RRG

RTO WEST WILL ASSUME NEW OBLIGATIONS THAT MAY RESULT IN SIGNIFICANT LIABILITY RISK EXPOSURE

- DUTY TO MAINTAIN RELIABLE GRID OPERATION
- DUTY TO PERFORM OATT RESPONSIBILITIES
- DUTY TO CONTROL INTERCONNECTIONS
- DUTY TO MAINTAIN OR SCHEDULE MAINTENANCE OF THE TRANSMISSION SYSTEM



RTO FUNCTIONS HAVE THE POTENTIAL TO AFFECT A BROAD RANGE OF ENTITIES

- CUSTOMERS
- SCHEDULING COORDINATORS
- MARKET PARTICIPANTS
- ELECTRIC SYSTEM OWNERS
- GENERAL PUBLIC

ALL ARE POTENTIAL CLAIMANTS UNDER
LIABILITY THEORIES PREMISED IN
CONTRACT OR TORT.



TRADITIONAL PROTECTIONS LIMITING LIABILITY EXPOSURE FOR PUBLIC UTILITIES ARE ERODING OR ARE NOT AVAILABLE TO RTO WEST

- POTENTIAL CLASS ACTION CERTIFICATION (GPU ENERGY)
- POTENTIAL LIABILITY FOR FAILING TO RESTORE SERVICE (NATIONAL UNION V. PUGET)
- NY ISO DECISION REJECTING TARIFF LIMITATIONS
- NO SOVEREIGN IMMUNITY (UNLIKE BONNEVILLE)
- DIFFERENT TARIFF LIMITATIONS OF LIABILITY PERMITTED AT THE STATE LEVEL



CURRENT STATUS OF UTILITY- TO-UTILITY LIABILITY

- VOLUNTARY INTERCONNECTIONS
- NO PROMISE TO OPERATE TO A STANDARD TO MINIMIZE ELECTRIC DISTURBANCE OUTSIDE OF WIES OR RMS
- NO LEGAL DUTY TO OTHER SYSTEMS OR OTHER SYSTEM'S CUSTOMERS
- SOME SOVEREIGN IMMUNITY



WIES AGREEMENT PROVIDES:

- PROPERTY DAMAGE RELEASE AND HOLD HARMLESS (INSURE OWN PROPERTY)
- WAIVER OF SUBROGATION
- RELEASE OF LIABILITY FOR ELECTRIC DISTURBANCES
- NO SPECIFIC INDEMNITY FOR CONSUMER CLAIMS
- SMALL COMMON INSURANCE POOL FOR CONSUMER CLAIMS ARISING FROM TWO SYSTEM EVENTS
- TARIFF LIMITS ON LIABILITY FOR ORDINARY NEGLIGENCE IN SOME BUT NOT ALL STATES



RTO WEST AND UTILITIES MOVE TO A LIABILITY FRAMEWORK WHICH IS MUCH DIFFERENT, SO IT IS PROPOSED THAT WE CHANGE THE INFRASTRUCTURE

NEW MULTI-LATERAL AGREEMENT TO REPLACE WIES

- MUTUAL PROPERTY DAMAGE RELEASE POSSIBLY EXCEPT FOR RTO WEST NON-DIRECTIVE INCIDENTS (ISSUE NO. 2)
- WAIVER OF CONSEQUENTIALS
- HOLD HARMLESS FOR THIRD-PARTY PERSONAL INJURY CONTACT CASES
- DAMAGES FOR RTO WEST DISPATCH ERRORS (ISSUE NO.1)
- SILENCE ON INDEMNITY FOR THIRD-PARTY END USE CLAIMS
- INSURANCE REQUIREMENT

SUBGROUP A HAS TWO RECOMMENDATIONS TO ATTEMPT TO CONTROL RTO WEST LIABILITY TO MANAGEABLE LEVELS

RECOMMENDATION 1

- **RTO West Should Attempt to Include Tariff Protection for Continuity of Service Limiting Liability for Negligence.**

RECOMMENDATION 2

- **RTO West Should Carry Appropriate Levels of Insurance and Self-Insured Retention.**



SUBGROUP A IS REFERRING TWO ISSUES

- WHETHER GENERATORS SHOULD RECOVER DEMONSTRABLE OPPORTUNITY COSTS RESULTING FROM THE RTO'S NEGLIGENT ACTS OR FAILURE TO FOLLOW ITS TARIFF AND WHAT ARE DEMONSTRABLE OPPORTUNITY COSTS.
- WHETHER RTO WEST SHOULD BE RELEASED FROM PROPERTY DAMAGE LIABILITY TO A **TO**, **GO** OR **LO** UNDER CIRCUMSTANCES WHERE RTO WEST ISSUED NO DIRECTIVE TO SUCH **TO**, **GO** OR **LO**, BUT NEVERTHELESS ITS ACTIONS OR OMISSIONS RESULTED IN PROPERTY DAMAGE ON A **TO**, **GO** OR **LO** SYSTEM.